IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 16044 of 1995

Between:

M/s. Peacock Granites Pvt. Ltd.,
Phase-II, I.D.A., Cherlapalli, Ranga Reddy District,

rep. by its Managing Director, Sri V.Mohan Reddy.

..... PETITIONER

AND

1 The A.P. State Electricity Board, rep. by its Secretary,
Vidyut Soudha, Somajiguda, Hyderabad.
2 The Superintending Engineer, Operations,

Secunderabad Circle, Mint Compound, Hyderabad.
3 The Assistant Accounts Officer, Hyderabad (Rural),
North-I, Hyderabad.
4 The Government of A.P., Industries and Commerce

Department, Secretariat Buildings, rep. by its Secretary.
5 The General Manager, District Industries Centre,
Ranga Reddy District, Balanagar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ or an order or a direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents 1 to 3 in discontinuing the 25% power rebate to the petitioner unit as highly illegal, arbitrary, unjust, void without jurisdiction and violative of G.O.Ms.No.654, dt.13.7.1976 and consequently declare that the petitioner unit is eligible for 25% rebate on power tariff for the initial 3 years from the date of coming into commercial production i.e., w.e.f. 02.12.1993.

Counsel for the Petitioner: MR. DUBA V. NAGARJUNA BABU

Counsel for Respondents 1 to 3: MR. M.SREE RAMULU REDDY (STANDING COUNSEL FOR AP TRANSCO)

Counsel for Respondents 4 and 5: GOVERNMENT PLEADER FOR

INDUSTRIES

The Court made the following:

ORDER:

This writ petition is filed seeking a Writ of Mandamus to declare the action of respondents 1 to 3 in discontinuing 25% power rebate to the petitioner-Unit as illegal, arbitrary and is in violation of Government orders issued in G.O.Ms.No.654, dated 13-07-1976.

The petitioner is an industry involved in the business of cutting and polishing of granite blocks. The Government has issued G.O.Ms.No.654, Industries and Commerce Department, dated
13-07-1976 offering of 25% rebate on the power tariff to the new industrial units initially for a period of three years. Basing on the same, the then A.P. State Electricity Board has issued B.P.Ms.No.691, dated 10-08-1976 extending the benefit of 25% rebate to the petitioner unit. In terms of the Government orders and B.P.Ms.No.691, the General Manager, District Industries Centre, Ranga Reddy District at Balanagar, Hyderabad has certified the petitioner unit as eligible for power rebate in terms of G.O.Ms.No.654, dated 13-07-1976 for a period of three years. The petitioner unit went into commercial production w.e.f. 02-12-1993 and as per the eligibility certificate, the petitioner unit was given power rebate. But, all of a sudden, from the month of June, 1995, even before expiry of the three years' period, the said rebate was discontinued, which necessitated the petitioner to question the same.

It is the case of the petitioner that absolutely there are no valid reasons to discontinue the rebate and as much as the petitioner unit was certified by the competent authority for giving rebate of 25% in power tariff in terms of Government orders and Board proceedings for a period of three years, it is entitled to rebate for a period of three years as certified by the competent authority.

In the counter affidavit filed on behalf of respondent No.3, while admitting that the petitioner was eligible for rebate in terms of B.P.Ms.No.51, dated 24-05-1993, it is stated that the petitioner unit was initially released from 60 Horse Power contracted load for three years w.e.f. 02-12-1993. But, however, in the month of January, 1995, it was found that the industry was involved in substantial expansion/additional load of 15 HP over and above the existing original sanctioned load of 60 HP on which the

rebate was sanctioned. In that view of the matter, in terms of Clause 3(iii) of B.P.Ms.No.51, dated 24-05-1993, it amounts to substantial expansion of the unit. As such, the petitioner unit is not entitled for the rebate of 25% from the date of its expansion.

I have perused the copy of B.P.Ms.No.51, dated 24-05-1993, wherein the list of ineligible industries for the rebate of 25% in power tariff as per B.P.Ms.No.689, dated 17-09-1975 and B.P.Ms.No.691, dated 10-08-1976 is given. Clause 3(iii) of B.P.Ms.No.51 reads as follows:

> " (iii) There shall be no rebate to the substantial expansion if any made by existing eligible industries with effect from the date of issue of this order."

Further, it is stated, from the said B.P., there is no clear guideline to determine a unit as a substantive expansion or not. It is stated by the learned Standing Counsel for A.P. Transco that there are also no guidelines to that effect.

It is submitted by the learned Counsel appearing for the petitioner that in this case merely because of 15 HP additional load is obtained, it cannot be automatically construed as a substantial expansion. Further, it is submitted that the competent authority has certified the eligibility of the petitioner unit for giving rebate of 25% in power tariff in terms of Government orders, the Board also issued proceedings giving 25% rebate in power tariff for a period of three years and therefore, the respondents cannot withdraw the said rebate without notifying the petitioner any ground.

On the other hand, it is submitted by Sri M.Sree Ramulu Reddy, learned Standing Counsel for A.P. Transco that as much the petitioner has obtained additional sanction of 15 HP in the month of January, 1995, he is not eligible for continuation of rebate in terms of Clause 3(iii) of B.P.Ms.No.51, dated 24-05-1993.

With reference to the above said submissions in this case, it is to be noted that admittedly the petitioner unit was certified as eligible for 25% rebate on the power tariff initially for a period of three years, such a power also given right from 02-12-1993 the petitioner unit going into commercial production. It is also not in dispute that the petitioner unit has obtained additional load of 15 HP in the month of January, 1995. But the fact remains merely because of additional load of 15HP is obtained by the petitioner unit, it cannot be construed as a substantial expansion

within the meaning of Clause 3(iii) of B.P.Ms.No.51, dated 24-05-1993. Further, it is to be noticed that when the eligibility certificate was given by the competent authority for a period of three years and the petitioner was already granted rebate of 25% on the power tariff, if for any reason rebate is to be stopped, the petitioner has to be notified the grounds before any action is taken against him.

From the averments in the counter affidavit and the record disclose that no notice was given to the petitioner unit on which ground rebate of 25% on the power tariff was discontinued, which was already sanctioned by the competent authority as per the eligibility certificate given to the petitioner. In that view of the matter, there is absolutely no valid reason for discontinuing the power rebate. But, however, it is stated in the counter affidavit that subsequently the petitioner unit was sold and some other industry was run in the premises of the petitioner unit. But, however, as much as the petitioner ran the unit for more than three years, in that view of the matter, I dispose of the writ petition declaring that the petitioner is entitled for rebate of 25% on power tariff for a period of three years as per the eligibility certificate dated 21-02-1994 issued by the District Industries Centre, Ranga Reddy District from the date of commercial production i.e. 02-12-1993. In the three years' period, if any bills are due from the petitioner unit on account of power consumption, it is open for the respondents to collect the same after giving rebate of 25% on power tariff to the petitioner unit.

Subject to the above directions, the writ petition is allowed to the extent indicated above. No order as to costs.

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R.SUBHASH REDDY, J

22nd February, 2005.

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That Rule Nisi has been made absolute as above.

Witness the Honourable Sri Devinder Gupta, the Chief Justice on this Tuesday, the

Twenty Second day of February, Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary, A.P. State Electricity Board,
Vidyut Soudha, Somajiguda, Hyderabad
2 The Superintending Engineer, Operations, Secunderabad Circle,
Mint Compound, Hyderabad.
3 The Assistant Accounts Officer, Hyderabad (Rural),
North-I, Hyderabad.
4 The Secretary, Industries and Commerce Department,

Government of A.P., Secretariat Buildings, Hyderabad.
5 The General Manager, District Industries Centre,
Ranga Reddy District, Balanagar, Hyderabad.

6 Two CCs to the Government Pleader for Industries,

High Court Buildings, Hyderabad (O.U.T).

7 Two CD copies.